

UTAH SCHOOL LAW UPDATE

Utah State Office of Education

November 2006

Student Cheaters

At a recent conference in Baltimore, Maryland, a representative from ETS described some of the many creative means students use to improve their test scores without actually studying.

While many teachers will be overly familiar with some of these methods, we offer this short list to spur discussion

about methods for curbing cheaters on state core and standardized tests.

According to the ETS representative, the number one method of cheating used by students on standardized test is still copying another person. Students, however, have found new methods of doing so using today's technology.

For instance, students use the popular hoodie to hide their camera phones. With the push of a button, a test can be photographed or videotaped and sent to another student's cell phone. With infrared technology, the student can "beam" the test image to another student in the same room, without the hassle of dialing a number.

As the ETS person

pointed out, cell phones with video capabilities are actually faster to use and the student can video the

entire test or answer sheet in a matter of seconds.

Because of this, active proctoring by the assigned teacher is essential. Grading papers or reading at the teacher's desk is no longer an option during testing periods. Proctors must move around the room to keep an even closer eye on what students are doing.

Another option is to ban cell phones during the testing period. Proctors could also make students place their bags at the front of the room during test taking.

Students have also been known to steal tests; some have been encouraged to do so by coaches. Others are motivated by the large amounts of money students, and parents, are willing to pay for a copy of the test.

Schools should also check camera phones following tests for images of the test or answer sheet.

ETS also recommends storing tests in an area that is accessible to three or fewer people and which is NOT accessible by a master key.

Student cheaters have always been a problem in school, but the ever smaller size and greater capabilities of cell phones and other technological marvels increases the need for vigilance by the proctor.

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UPPAC CASES

• The Utah State Board of Education revoked by default Kendall Jackson's educator license. The action results from Jackson's possession of an air pistol and tazer gun at school. Jackson was charged with three class B misdemeanors based on his actions and was sentenced to 12 months probation. Jackson did not respond to USOE attempts to contact him regarding the allegations.

UPPAC Case of the Month

Past criminal conduct by educators can result in revocation or suspension of the educator's license.

This may come as a shock to some educators whose misconduct occurred many years prior to licensing action, but courts have upheld licensing action based on misconduct dating back as much as 20 years or more.

A recent example of this comes from the Court of Appeals in Texas. In July 2006, the court ruled that evidence that the teacher had sexually abused his stepdaughter in 1979 supported the State Board for Educator Certification's decision to revoke his license.

The teacher, James Marsh, received his certification in 1989. At that time, he did not reveal that he had been arrested 10 years earlier and charged with sexual assault on a child. Texas did not perform background checks at the time, so the charge went unnoticed.

The stepdaughter then filed a complaint with the Board in 1999. Marsh

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Eye On Legislation-Vending Machines and Other Evils

At its October meeting, the State Board asked staff members to research whether the Board has authority over school vending

machines.

Some local news reports on the issue were somewhat misleading. The reports suggested that the Board intends to use its rulemaking authority to dictate what items can be sold in the machines.

Rather, the Board, while supportive of moves to healthier fare in the machines, is looking to address discrepancies found on the business

Specifically, the Board wants to ensure that districts are entering

end of the vending empire.

into written contracts, not verbal agreements, and are using appropriate accounting procedures to

> track the revenues from the machines and expenditures with those revenues.

> Legislators, on the other hand, have expressed interest in regulating what is dispensed from the machine.

Legislation was offered in prior sessions to this end, but with-

out success. Given the national focus on the issue, chances are that legislation relating to the items sold in school vending machines will be on the legislative

agenda again in the near future.

Other issues that are expected to rise again during the next session will include charter school financing issues, attempts to put teeth (and hopefully money) in the current class size reduction statute, and much anticipated changes to the high school diploma/UBSCT provisions.

Each of these issues has made headlines recently, though the last has received a longer run in the rumor mill than the others.

As many educators are well aware, the State Board adopted a new rule last year granting high school seniors who do not pass UBSCT a diploma which indicates

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Recent Education Cases

Gray ex rel. Akexander v. Bostic (11th Cir. 2006): A school resource officer who handcuffed a nine-year old student was found to have violated the student's Fourth Amendment rights.

The student had been disrespectful and threatened to hit her p.e. teacher.

The coach was not afraid and told the SRO, who heard the threat, that she would handle the situation. The SRO insisted on

taking care of the incident, so the coach went back to her class.

The SRO then handcuffed the student, telling her that she "committed a misdemeanor in my presence and showing her what would happen if a less generous officer than I were to arrest her for her actions."

Because there was no indication that the student was a threat to anyone when she was handcuffed, the court found the SRO's actions

"excessively intrusive" and in violation of the student's right to be free from unreasonable seizure.

In the words of the court, "every reasonable officer would have known that handcuffing a compliant nine-year-old child for purely punitive purposes is unreasonable."

Cassimy v. Board of Education (7th Cir. 2006). A principal who failed to perform and whose salary was

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UPPAC case cont.

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and the victim were the only witnesses at the hearing. The victim related all that Marsh had done to her from 1977-79 when she was 13-15 years old.

In response, Marsh testified that he had never been convicted of anything, received a diversion agreement, and had attended 60 court ordered therapy sessions.

The administrative law judge assigned to the hearing found that Marsh was unfit to teach based

on his actions toward his stepdaughter and the lack of evidence that Marsh had been rehabilitated. The Board accepted the ALJ's findings and revoked Marsh's certificate.

Marsh appealed on the grounds that the ALJ arbitrarily decided he was unfit to teach based on his past acts and despite his testimony that he received counseling.

The lower court upheld the Board's decision, as did the appeals court. The appeals court found that the ALJ was in the best position to judge the witnesses' credibility and had ample reason to determine that Marsh's uncorroborated testimony of rehabilitation was insufficient evidence of fitness to teach.

The Court also agreed with the Board's finding that "Possessing or exhibiting an interest in children as objects of sexual gratification is not to be permitted or tolerated within the ranks of teaching professionals in this state."

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Eye on Legislation (Cont.)

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that the student did not pass the test.

Philosophical differences abound about the rule. Some are concerned about the effect on a student's academic and career prospects if he or she does not receive a diploma based on the results of one test. Others want to ensure that a diploma, and the UBSCT, have a clear meaning easily deciphered by potential employers.

The Board is considering other options, with input from legislators, special education interests, and others. One possible option is

to create an appeals process that would enable students who meet strict requirements to receive a

diploma without passing UBSCT in limited situations.

At least two Legislators, Rep. Kory Holdaway, R-Taylorsville, and Sen. Howard Stephenson, R-Draper, have already requested bills related to the issue. Neither bill has text this far in advance of the session.

Other bill requests include amendments to last year's bill al-

lowing the creation of smaller school districts, a bill entitled "Classroom Bill of Rights" and yet another change to the process for nominating State Board candidates.

Legislators are also seeking legislation on student discipline including a bill entitled "Secondary school Monitoring of Student Access to Online Materials" from Rep. DeMar "Bud" Bowman, R-Cedar City, another attempt by Rep. Eric Hutchings, R-Kearns, to strengthen the truancy law, and a request from Rep. Lorie Fowlke, R-Orem, to amend the school discipline law.

Your Questions

Q: An injured football player is seeking to be back on the field. Though his doctor has argued against the student playing right now, the parents have offered to sign a release of liability for any injury that might occur if their student plays against the doctor's wishes. Should the school accept the release?

A: No, for several reasons, which most administrators will recognize immediately.

What do you do when. . . ?

From a legal standpoint, the answer is no because the release is meaningless. The Utah Supreme Court ruled several years ago that a parent CANNOT give up a child's right to sue for his injuries.

The standard release forms schools use for field trips and the

like are a valuable tool for reminding parents that some activities are dangerous, and for getting parent permission for the student to attend the event, participate in the sport, etc. But the forms do NOT release the school from liability.

Further, while the parents might be willing to accept the risks to their student, the school does not want to set the precedent of asking for a doctor's approval before

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Recent Cases Cont.

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cut due to budget concerns was not retaliated against for making an Americans with Disabilities Act claim.

Cassimy had multiple documented problems as a principal. He was told to prepare a plan to address the problems. He did not submit a plan, but took a leave of absence, citing work-related stress and anxiety leading to depression.

The district, with a note from the principal's doctor in hand and his

own statements that he could not read, write, eat, sleep or get up in the morning, placed Cassimy on medical leave. A few weeks later, Cassimy provided a note from his doctor releasing him to return to work.

Since the original problems with Cassimy's performance were never addressed, the district reassigned him to a teaching position, with no loss in salary. His salary was later reduced, along with five others, due to budget cuts.

Cassimy sued, claiming the reduction of his salary was retalia-

tion for making an ADA accommodation request.

The court determined first that Cassimy was not disabled for ADA purposes because, while his depression may have impeded his ability to teach, it did not **prevent** him from doing so—a requirement under the statute—nor was it a long-term disability. The court also found no evidence to support the retaliation claim since five others in similar positions also had their pay cut.

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The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of Education provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

Your Questions Cont.

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an injured athlete can play, and then ignoring the doctor's advice based on a parent's persistence.

Q: May a 16-year old student withdraw himself from school in order to enroll himself in another school against his parents' wishes?

A: No. A 16-year old and above may be released from school if the district superintendent, with the input of the parents, determines that the student can no longer benefit from formal schooling.

Unless the student is homeless, he has no right to enroll in another school without establishing residency. Since residency for students under the age of 18 is based on the parent's home address, a 16-year old would not

have residency (except, again, if the student is homeless).

Q: Are there any special provisions in the law regarding guardianship issues with military personnel?

A: There are no special legal provisions for children whose parent(s) are serving overseas in the military. Districts can require court-ordered guardianship for the person caring for the child while the parent is away. A district can also

use the "hardship" provisions in state law to address the situation without court-ordered guardianship. The district-granted guardianship, however, has the same effect as court-ordered: the parent's rights are terminated.

This means that the guardian is fully responsible for any medical or other costs, can claim the child as a deduction on his taxes and accepts all liability for the student.

Q: A student's grandmother said the parents asked her to review their child's records. Can we provide her access to the records?

A: Parents can give written consent to anyone they wish to have access to their child's education records. However, that consent must be written and dated.